IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 241 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

RAGHUVIRSINH K JADEJA

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Appearance:

Mr.B.D. Desai, APP for appellant

MR CH VORA for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 16/11/2000

ORAL JUDGEMENT

1. State of Gujarat has challenged the judgment and order dated November 30, 1991, rendered by learned Chief Judicial Magistrate, Bhuj, in Criminal case No.3060 of 1988, by which order, the respondent came to be acquitted

for the charges framed against him under Sections 468, 471, 477, and 420 of the Indian Penal Code.

2. Due to vacancies in the cadre of Armed Police Constable, names from the Employment Exchange were called for by the District Superintendent of Police, Bhuj. The name of the respondent was forwarded by the Employment Exchange for the said selection. The respondent was, ultimately, selected for the post of Armed Police Constable. It is the prosecution case that, while forwarding attestation forms, the respondent had corrected his qualification in the school leaving certificate. According to the prosecution, the school leaving certificate indicated that the respondent, at the time of leaving the school, had obtained certificate for study in Std. VI examination, but, after the respondent was selected for the post of Armed Police Constable, he had overwritten word "VI" and inserted word "VII" just to show that he had passed Std.VI examination. Minimum qualification for the post of Armed Police Constable was passing of Std. VI examination. Junior Clerk, Manojkumar Devji Maheshwari, of the Office of the District Superintendent, Bhuj, filed a complaint against the respondent for the above-stated offences. The above complaint was investigated by Home Inspector, Mr. Chowdhary. On completion of investigation, a chargesheet came to be filed against the respondent for the offences punishable under Sections 424, 468, 477 and 420 of the Indian Penal Code, in the Court of Chief Judicial Magistrate, Bhuj. The said chargesheet was registered as Criminal Case No.3060 of 1988.

3. The learned Magistrate framed necessary charge Exh.2C against the respondent. The charge was read over and explained to the respondent. The respondent pleaded not guilty to the charge and claimed to be tried. To prove the charges against the respondent, the prosecution examined following witnesses: (1) P.W.1. Manoj Devji Maheshwari, (2) P.W.2, Jayantilal Lalji Thakker and (3) P.W.3, Juwansinh Madhuba. The prosecution produced documentary evidence such as complaint, attestation certificates alleged to have been executed by the respondent, school leaving certificate issued by Shri Hatdi Panchayat Pradhmic School and order of removal of name of the respondent issued by the District Superintendent of Police, Bhuj. Further statement of respondent came to be recorded after prosecution case was over, wherein, he had stated that he had not executed any attestation certificate before the District Superintendent of Police and he had not submitted false school leaving certificate to obtain employment as

'unarmed police constable'.

4. On appreciation of the evidence led by the prosecution, learned Magistrate came to the conclusion that the prosecution had failed to prove that the respondent had carried out correction in the school leaving certificate. Learned Magistrate further observed that attestation certificates produced at Exh.16 and Exh.17 were not duly proved as they were not executed before the District Superintendent of Police and signatures of the attesting witnesses were not obtained before the District Superintendent of Police. On the basis of abovereferred to conclusion, learned Magistrate acquitted the respondent by the impugned judgment, giving rise to the present appeal.

5. Mr. B.D. Desai, learned Additional Public Prosecutor, and Mr. C.H. Vora, learned advocate for the respondent, have taken me through the entire evidence of the prosecution produced on the record of the case. The learned APP, Mr. B.D. Desai, submitted that the prosecution has produced sufficient material on the record of the case to establish that the respondent had, with dishonest intention to obtain employment, had corrected the school leaving certificate and had shown that he had passed Std. VI examination. Learned APP further submitted that the attestation certificates produced at Exh.16 and Exh.17 clearly prove that the respondent had misrepresented before the District Superintendent of Police that he had passed Std. VI examination and, therefore, learned Magistrate has erred in not appreciating the documentary evidence produced by the prosecution.

6. It may be mentioned that learned Magistrate has given cogent and convincing reason for not believing the case of the prosecution. The evidence led by the prosecution did not establish that the respondent had carried out correction in the school leaving certificate by correcting figure VI and over-writing figure VII in the school leaving certificate. It may be stated that the school leaving certificate Exh.12, in words, the figure was correctly stated as 'seven'. The prosecution has not proved that the respondent had corrected figure VII in the school leaving certificate. With regard to attestation certificates, learned Magistrate has concluded that attestation certificates Exh.16 and Exh.17 were not at all proved to have been executed before the District Superintendent of Police, as in the column of signature of District Superintendent of Police, no signature of the District Superintendent of Police was

obtained. It was further observed by learned Magistrate that, in the columns of signatures of attesting witnesses, signatures of the said witnesses were not obtained and, therefore, learned Magistrate has observed that the attestation certificates were not duly executed and, therefore, no reliance can be placed to hold that the respondent had corrected the certificates to show that he had passed Std.VI examination in order to secure employment. Reading the judgment of the trial court, in which cogent and convincing reasons have been given, in my opinion, learned Magistrate has rightly extended benefit of doubt in favour of the respondent. The reasoning given by learned Magistrate for disbelieving the documentary evidence produced by the prosecution is just and proper. In the criminal trial, heavy burden lies on the prosecution to prove the guilt of the accused. In my opinion, under no circumstances, it can be said that the appreciation of evidence by learned Magistrate is palpably wrong or perverse. Therefore, I am of the opinion that the order of acquittal does not call for any interference in this appeal filed by the appellant-State of Gujarat.

7. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of learned Magistrate who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by learned Magistrate for acquitting the respondent. Suffice it to say that learned Magistrate has given cogent and convincing reasons for acquitting the respondent and the learned Additional Public Prosecutor has failed to dislodge the reasons given by learned Magistrate in order to convince me to take the view contrary to the one already taken by learned Magistrate. Therefore, the acquittal appeal deserves to be rejected.

8. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

November 16, 2000 (M.H. Kadri, J.)

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(swamy)